

MT LEGISLATIVE HISTORY

Chapter 52 1991

Bill H 280 S _____

Original bill & hist. ✓C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Jan 31 ✓C

Hearing Date(s) Feb 14 ✓C

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Date Out Jan 31 ✓C

Feb 14 ✓C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____

Report _____

HB 279 INTRODUCED BY SCHYE, ET AL

PROHIBIT USE OF AUTO TELEPHONE SYSTEM,
DEVICES, OR FACSIMILE FOR SPECIFIC USE

1/19	INTRODUCED		
1/19	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/21	FIRST READING		
1/29	HEARING		
1/30	COMMITTEE REPORT—BILL PASSED		
2/01	2ND READING PASSED	97	1
2/04	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/05	FIRST READING		
2/05	REFERRED TO BUSINESS & INDUSTRY		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	49	0
3/12	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	88	1
3/18	3RD READING AMENDMENTS CONCURRED	96	0
3/22	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 230		

EFFECTIVE DATE: 10/01/91

HB 280 INTRODUCED BY THOMAS, ET AL

DENY TEMPORARY TOTAL DISABILITY BENEFITS
UPON RELEASE TO RETURN TO WORK
BY REQUEST OF GOVERNOR

1/19	INTRODUCED		
1/19	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/21	FIRST READING		
1/21	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
1/31	HEARING		
2/01	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	98	1
2/06	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/07	FIRST READING		
2/07	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL CONCURRED		
2/16	2ND READING CONCURRED	49	0
2/18	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
2/21	SIGNED BY SPEAKER		
2/21	SIGNED BY PRESIDENT		
2/21	TRANSMITTED TO GOVERNOR		
2/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 52		

EFFECTIVE DATE: 7/01/91

HB 281 INTRODUCED BY STICKNEY, ET AL

ALLOW HIV TEST FOR IMPAIRED PATIENT

1/19	INTRODUCED
1/19	REFERRED TO HUMAN SERVICES & AGING
1/21	FIRST READING

HOUSE BILL NO. 280

INTRODUCED BY THOMAS, DRISCOLL, SVRCEK, THAYER, BENEDICT,
WANZENRIED, LYNCH, SQUIRES
BY REQUEST OF THE GOVERNOR

IN THE HOUSE

JANUARY 19, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
JANUARY 21, 1991	FIRST READING.
FEBRUARY 1, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 2, 1991	PRINTING REPORT.
FEBRUARY 4, 1991	SECOND READING, DO PASS.
FEBRUARY 5, 1991	ENGROSSING REPORT.
FEBRUARY 6, 1991	THIRD READING, PASSED. AYES, 97; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 7, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 15, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 16, 1991	SECOND READING, CONCURRED IN.
FEBRUARY 18, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 19, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 280
 2 INTRODUCED BY Thomas Daniel Smith
 3 Benedict BY REQUEST OF THE GOVERNOR Lynch
 4 Wanzel
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO DENY TEMPORARY TOTAL
 6 DISABILITY BENEFITS TO A WORKER WHO IS RELEASED BY A
 7 TREATING PHYSICIAN TO RETURN TO THE SAME, A MODIFIED, OR AN
 8 ALTERNATIVE POSITION WITH THE SAME EMPLOYER AT AN EQUIVALENT
 9 OR HIGHER WAGE EVEN IF THE WORKER HAS NOT REACHED MAXIMUM
 10 HEALING; TO PROVIDE FOR REQUALIFICATION FOR BENEFITS;
 11 AMENDING SECTION 39-71-701, MCA; AND PROVIDING AN EFFECTIVE
 12 DATE AND AN APPLICABILITY DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 39-71-701, MCA, is amended to read:

16 "39-71-701. Compensation for temporary total disability
 17 -- exception. (1) Subject to the limitation in 39-71-736 and
 18 subsection (4) of this section, a worker is eligible for
 19 temporary total disability benefits when the worker suffers
 20 a total loss of wages as a result of an injury and until the
 21 worker reaches maximum healing.

22 (2) The determination of temporary total disability
 23 must be supported by a preponderance of medical evidence.

24 (3) Weekly compensation benefits for injury producing
 25 temporary total disability shall be $66 \frac{2}{3}\%$ of the wages

1 received at the time of the injury. The maximum weekly
 2 compensation benefits may not exceed the state's average
 3 weekly wage at the time of injury. Temporary total
 4 disability benefits must be paid for the duration of the
 5 worker's temporary disability. The weekly benefit amount may
 6 not be adjusted for cost of living as provided in
 7 39-71-702(5).

8 (4) If the treating physician releases a worker to
 9 return to the same, a modified, or an alternative position
 10 with the same employer at an equivalent or higher wage than
 11 he received at the time of injury, the worker is no longer
 12 eligible for temporary total disability benefits even though
 13 he has not reached maximum healing. A worker requalifies for
 14 temporary total disability benefits if the position is no
 15 longer available to the worker and the worker continues to
 16 be temporarily totally disabled, as defined in 39-71-116.

17 (4)(5) In cases where it is determined that periodic
 18 disability benefits granted by the Social Security Act are
 19 payable because of the injury, the weekly benefits payable
 20 under this section are reduced, but not below zero, by an
 21 amount equal, as nearly as practical, to one-half the
 22 federal periodic benefits for such week, which amount is to
 23 be calculated from the date of the disability social
 24 security entitlement.

25 (5)(6) Notwithstanding subsection (3), beginning July

LC 0761/01

1 1, 1987, through June 30, 1991, weekly compensation benefits
2 for temporary total disability may not exceed the state's
3 average weekly wage of \$299 established July 1, 1986."

4 NEW SECTION. **Section 2. Applicability.** [This act]
5 applies to claims for injuries that occur after [the
6 effective date of this act].

7 NEW SECTION. **Section 3. Effective date.** [This act] is
8 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0280, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to deny temporary total disability benefits to a worker who is released by a treating physician to return to the same, a modified, or an alternative position with the same employer at an equivalent or higher wage even if the worker has not reached maximum healing; to provide for requalification for benefits; amending sections 39-71-701, MCA; and providing a delayed effective date and an applicability date.

ASSUMPTIONS:

1. The number of injured employees eligible or capable of returning to work prior to maximum healing can not be determined at this time with any degree of accuracy.

FISCAL IMPACT:

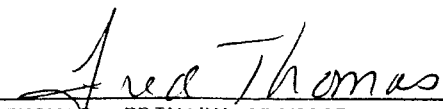
Undetermined

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Releasing employees back to work prior to maximum healing could get people back to work sooner and reduce worker's compensation payments.

 1-25-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-28-91

FRED THOMAS, PRIMARY SPONSOR DATE
Fiscal Note for HB0280, as introduced **HB 280**

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(H) LABOR & EMPLOY REL

PAGE NBR..... 103
 RUN TIME13:25
 RUN DATE.... 06/04/91

CHAIRMAN--CAROLYN SQUIRES
 NORMAL SCHEDULE==> SITE: ROOM 312-1

DAYS: M,W,F

TIME: 3:00 P.M.

SECRETARY--JENNIFER THOMPSON

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0141	1/10	1/24		PASS AS AMENDED	LABOR & EMPLOYMENT	2/06
HARRINGTON, DAN			PROVIDE UNEMPLOYMENT INSURANCE BENEFITS NONPROFESSIONAL SCHOOL EMPLOYEES			
HB0141	2/08			PASS AS AMENDED		2/18
HARRINGTON, DAN			PROVIDE UNEMPLOYMENT INSURANCE BENEFITS NONPROFESSIONAL SCHOOL EMPLOYEES			
HB0152	1/11	1/17		PASS AS AMENDED		1/30
HARRINGTON, DAN			REVISE STATE MINIMUM WAGE LAW TO CONFORM WITH FEDERAL LAW			
HB0187	1/15	1/29		PASS AS AMENDED		2/06
DRISCOLL, JERRY			REVISE WORKERS' COMPENSATION COMPUTATION FOR CONSTRUCTION INDUSTRY			
HB0204	1/16	1/29		DO PASS		1/30
RICE, SHEILA			REVISE OVERTIME COMPENSATION PERIODS IN CONSTRUCTION INDUSTRY			
HB0232	1/17	1/29		PASS AS AMENDED		2/06
CLARK, ROBERT			HIGHWAY PATROL DISCIPLINARY APPEAL THROUGH COLLECTIVE BARGAINING			
HB0251	1/17	1/31		DO PASS	APPROPRIATIONS	2/01
DRISCOLL, JERRY			EXTENDING LIFE OF WORKERS' COMPENSATION JOINT SELECT COMMITTEE			
HB0256	1/18	1/31		DO PASS		2/01
DRISCOLL, JERRY			REVISE CRITERIA USED TO DETERMINE ELIGIBILITY AND PAYMENT OF UI BENEFITS			
HB0271	1/19	2/14		PASS AS AMENDED		2/15
DRISCOLL, JERRY			ALLOW PSC TO REQUIRE REAR-END TELEMTRY SYSTEM ON CERTAIN RAILROAD TRAINS			
HB0280	1/19	1/31		PASS AS AMENDED		2/01
THOMAS, FRED			DENY TEMPORARY TOTAL DISABILITY BENEFITS UPON RELEASE TO RETURN TO WORK			
HB0305	1/21	2/05		PASS AS AMENDED		2/13
RICE, JIM			ALLOW DEPT OF LABOR TO CONDUCT HEARINGS BY TELEPHONE IN CERTAIN CASES			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR CAROLYN SQUIRES, on January 31, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)

Members Excused:

Thomas Lee (R)
Tim Whalen (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 251

Presentation and Opening Statement by Sponsor:

REP. JERRY DRISCOLL, House District 92, stated HB 251 extends the life of the Joint Select Committee on Workers' Compensation. During the interim the Committee did not generate much legislation, but it did provide understanding to the Workers' Compensation system. The \$15,000 comes out of the Workers' Compensation account and not the General Fund.

changed. It more closely reflects what employees would be eligible for under the present law. If the 1.9 percent is changed to 1.85, kill the bill.

HEARING ON HB 280

Presentation and Opening Statement by Sponsor:

REP. FRED THOMAS, House District 62, stated that HB 280 would amend the current Workers' Compensation statute to provide a financial incentive to employers to develop a modified or alternative position for an injured worker. It will provide a financial incentive for an injured worker to accept such a position if it is offered. The current statute allows an injured worker who has not reached maximum healing to refuse a position offered by his employer without affecting the worker's benefits. As a result, there is no clear financial incentive for the worker or the employer to return the injured worker to work. There is a potential for cost savings. Page 2, line 8, says if the treating physician releases the worker to return to the same, a modified, or alternative position with the same employer at an equivalent or higher wage than he was receiving at the time of the injury, the worker is no longer eligible for temporary total disability benefits even though maximum healing has not been reached. He presented two amendments. EXHIBIT 2. The amendment of Pg. 2, Ln. 9, keeps an employer from offering a job to the injured party that is out of the injured party's realm or past position. The Labor Department has to work with employers so that this bill would be functional and utilized.

Proponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, stated his support of HB 280. EXHIBIT 3. In addition, he had no objection to the amendments but said the second amendment was redundant.

George Wood, Executive Secretary, Montana Self Insurers Association, stated the bill was necessary to give the employer and employee an incentive to return to work when a job is available, and the employee doesn't have to accept it at a reduced wage.

James Tutwiler, Montana Chamber of Commerce, said the bill has a reasonable prospect of benefiting both employers and employees. Montana ranks high among other states in the expenditure of payments per \$1,000 of premium in the category of temporary total disability. This bill will help address that problem.

Michael Sherwood, Montana Trial Lawyers Association, stated support of the bill as amended. It gives the worker an opportunity to get back in the work place.

worker an opportunity to get back in the work place.

Jim Murphy, Executive Vice President, State Fund, stated support of the bill as amended.

Opponents' Testimony: None

Questions From Committee Members: None

Closing by Sponsor:

REP. THOMAS closed HB 280.

EXECUTIVE ACTION ON HB 256

Motion/Vote: REP. DRISCOLL MOVED HB 256 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 280

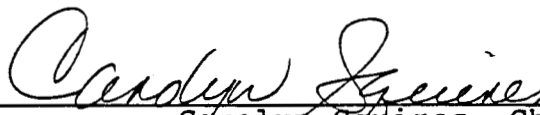
Motion: REP. THOMAS MOVED HB 280 DO PASS.

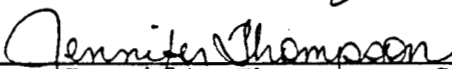
Motion/Vote: REP. THOMAS moved to amend HB 280. EXHIBIT 4. Motion carried unanimously.

Motion/Vote: REP. THOMAS MADE A SUBSTITUTE MOTION THAT HB 280 DO PASS AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:00 p.m.


Carolyn Squires, Chair


Jennifer Thompson, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE

1/31/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE			✓
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN			✓
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 280 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Page 2, line 10.

Following: line 9

Insert: "that the individual is able and qualified to perform"

2. Page 2, line 14.

Following: "the"

Insert: "modified or alternative"

3. Page 2, line 15.

Following: "available"

Insert: "for any reason"

AMENDMENT TO HOUSE BILL 280
First Reading Copy

Requested by Representative Thomas
For the Committee on Labor and Employment Relations

1. Page 2, line 10.

Following: "same employer"

Insert: ", which is work the individual is able and qualified to perform,"

Amendment
House Bill 280
(Introduced)



1. Page 2, line 14.
Following: "benefits if the"
Insert: "modified or alternative"

2. Page 2, line 15.
Following: "longer available"
Insert: "for any reason"

EXHIBIT 3
DATE 1/31/91
HB 280

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1723

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 59624

January 31, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 280

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

Madam Chair and members of the committee.

I don't want to repeat what Representative Thomas has already stated as he has done an excellent job in explaining HB 280 to you. I do want to express to you the importance Governor Stephens places on the passage of this legislation.

The first issue is obvious. That is, the sooner an injured worker can be returned to work, the lower the cost to the system which results in holding premiums in line for the employer. But more important, the sooner an injured worker can be returned to a productive role, the faster the healing process of his/her injury.

Montana's labor force is very proud of the work they do and want to be part of the team that has their signature on the finished product. They can't be involved in this effort if they are sitting on the sidelines.

This legislation will require a great deal of cooperation from employers as they are being asked to maintain the level of wages of the employee even though the worker is performing a less productive task. The Governor will ask the insurers in the state to work with their policyholders in implementing the program. The Governor is committed to this program and we will intercede where necessary to obtain the cooperation of employers that have questions or fears.

This in no way reduces our responsibility to enforce safety standards in the public sector. And we will continue our efforts to make all workplaces - safe workplaces.

We encourage your approval of HB 280.

15

Amendments to House Bill No. 280
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure

January 31, 1991

1. Page 2, line 10.

Following: line 9

Insert: "that the individual is able and qualified to perform"

2. Page 2, line 14.

Following: "the"

Insert: "modified or alternative"

3. Page 2, line 15.

Following: "available"

Insert: "for any reason"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations

COMMITTEE

BILL NO. 280

DATE 1/31/91

SPONSOR(S) Fred Thomas

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mike McCone	DLI	X	
George Wood	MT Self Insurance Assoc	X	
Michael Sherwood	MT L.A.	X as amended	
Jim Murphy	State Jewel	X	
JAMES TUTTILER	MT Chamber	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

CHAIRMAN--RICHARD MANNING
NORMAL SCHEDULE==> SITE: RM 413/415

DAYS: T,TH,S

TIME: 3:00 P.M.

SECRETARY--LINDA CASEY

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REFERRER TO COMM	DATE OUT
HB0271	2/27	4/02		CONCUR AS AMENDED		4/03
DRISCOLL, JERRY			ALLOW PSC TO REQUIRE REAR-END TELEMTRY SYSTEM ON CERTAIN RAILROAD TRAINS			
HB0280	2/07	2/14		CONCUR		2/15
THOMAS, FRED			DENY TEMPORARY TOTAL DISABILITY BENEFITS UPON RELEASE TO RETURN TO WORK			
HB0305	2/19	3/05		TABLED ON 03/05		
RICE, JIM			ALLOW DEPT OF LABOR TO CONDUCT HEARINGS BY TELEPHONE IN CERTAIN CASES			
HB0336	2/20	3/07		CONCUR AS AMENDED	LABOR & EMPLOYMENT	3/15
SIMPKINS, RICHARD			REVISE THE STATE WAGE PROTECTION LAWS; EMPLOYER PAY FINE WHEN WAGES NOT PAID			
HB0336	3/16			CONCUR AS AMENDED		3/26
SIMPKINS, RICHARD			REVISE THE STATE WAGE PROTECTION LAWS; EMPLOYER PAY FINE WHEN WAGES NOT PAID			
HB0342	2/20	3/07		CONCUR AS AMENDED		3/26
WANZENRIED, DAVID			CLARIFY WORKERS' COMP COVERAGE FOR INDEPENDENT CONTRACTORS AND OTHERS			
HB0356	2/12	3/07		CONCUR AS AMENDED		3/14
BECK, GARY			REQUIRE APPOINTMENT OF CERTAIN MEMBERS TO BOARD OF PERSONNEL APPEALS			
HB0465	2/25	3/12		CONCUR AS AMENDED		3/20
THOMAS, FRED			GENERALLY REVISE WORKERS' COMPENSATION LAW			
HB0506	2/27	3/12		TABLED ON 03/27		
COBB, JOHN			WORKERS' COMPENSATION LUMP-SUM PAYMENT STATUTE REVISION			
HB0600	2/26	3/19		TABLED ON 03/27		
DRISCOLL, JERRY			REVISE UNEMPLOYMENT INSURANCE MAXIMUM BENEFIT AMOUNT SCHEDULE			
HB0643	2/27	3/21		CONCUR AS AMENDED		4/01
SQUIRES, CAROLYN			PROVIDE EMPLOYEE PROTECTION AGAINST AN INSTITUTION'S CLOSURE			

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Richard Manning, on February 14, 1991,
at 3:20 p.m.

ROLL CALL

Members Present:

Richard Manning, Chairman (D)
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: NONE.

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 267

Presentation and Opening Statement by Sponsor:

Senator Towe told the Committee Senate Bill 267 deals with "goons". He explained very frequently before and during a large an employer will contact a professional security agencies such as Baker and Associates. The security agency provides security to the employer during the strike with elaborate electronic, high technology equipment that allows for eavesdropping and surveillance. He explained the agencies set up before the strike. They make establish a excellent relationship with local law enforcement. They keep track of strikers by following them. Senator Towe commented while the agency is hired for security, "their principle purpose is disruption" by causing violence and instigating incidents that can be blamed on the strikers to turn public opinion against the union. He cited an example. Baker and Associates had just come off the Hormel strike and were hired by Decker. Their personnel were put in caravans with caravans of miners crossing the picket line, the equipment was set to watch

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Nathe asked Gene Fenderson if he wished to have House Bill 204 amended to address the "make up" day. Mr. Fenderson told the Committee he did not wish to amend the bill. He explained he wanted it on record in case a question arose about "make up" days. He explained these are called "make up" days but are weather days.

Senator Keating asked Gene Fenderson why he opposed a 10-hour work day during a previous session. Mr. Fenderson told the Committee the previous legislation was concerned with the mining industry, cement plants, etc. He explained the unions and workers in that industry opposed the 10-hour day. This legislation is the construction industry which believes in a 10-hour day.

Senator Pipinich told the Committee there were 480 union employees. There will twelve members here (testifying) which the Senators questioned as to why they did not make this a part of the bargaining. The members explained they could not because it would not be "voted in".

Senator Keating asked Mr. Abraham how his day was broken out for rest periods and lunch when working 10-hour days. Mr. Abraham explained the day is broken in thirds. Starting a 7:00 a.m. and breaking around 10:00 a.m. (left up to the worker in most cases) with noon to 12:30 p.m. for lunch; breaking again from 2:00 p.m. to 2:30 p.m.; working up until 5:30 p.m. Senator Keating asked if that works out and the workers do not get too tired. Mr. Abraham said that was correct.

Closing by Sponsor:

Representative Rice closed on House Bill 204. She told the Committee this bill passed House Labor unanimously, and passed the Floor easily.

HEARING ON HOUSE BILL 280Presentation and Opening Statement by Sponsor:

Representative Thomas presented House Bill 280 at the request of the Governor. He told the Committee it would provide a financial incentive to employers to develop and modify alternative positions for injured workers. It would provide a financial incentive to injured workers to accept those positions. The current statute allows a worker who has not reached maximum

2

healing to refuse a position offered by his employer without effecting his current benefits. House Bill 280 would change this. If the treating physician releases the injured worker to the same, modified or alternative position (by the same employer), the worker is able and qualified to perform by determination of parties involved, at equivalent or higher wage at time of injury, the worker would no longer be eligible for temporary total disability benefits. This position would get the employee back in the workforce and would save the system money. He explained when working with the department (DOLI) and the Governor it was determined the language on Line 11 ("the individual is able and qualified to perform") makes it clear the worker would be kept in the same area of work.

Proponents' Testimony:

Mike Micone, Commissioner of the Department of Labor and Industry spoke from prepared testimony in support of House Bill 280. (Exhibit #9)

George Wood, Executive Secretary of the Montana Self Insurers Association told the Committee there is a re-qualification procedure also. If the employer creates the position and the employee accepts it; then the position made available ends, the employee can return to temporary total disability.

James Tutwiler of the Montana Chamber of Commerce spoke in support of House Bill 280. He explained it would offer advantages for injured workers; has the prospect of returning them to a position which will not impede their recovery. The legislation poses advantages for the employer because they would have an experienced worker returning. He commented on the concern about the "health and vitality" of the workers' compensation fund. He explained some studies show Montana's payments for temporary total disability rank very high.

Bob Heiser of the United Food and Commercial Workers spoke in support of House Bill 280. He explained the legislation was examined. All concerns are addressed in the bill.

Pat Sweeney of the Montana State Compensation Mutual Insurance Fund spoke in favor of House Bill 280. He explained the bill is codifying the efforts the state fund is already undertaking.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Towe asked Pat Sweeney what would happen if the worker who has been released by the doctor cannot perform after a

period of time and the doctor determines the worker's condition has been worsened and the worker should not go back to the job.

Mr. Sweeney pointed to the provisions where the employee can go directly back on temporary total disability benefits. He explained the physician is the qualifier in these cases. If the employee is determined unable, he is no longer qualified for the position because of the employee's condition.

Senator Towe asked where the physician is mentioned in the bill. Mr. Sweeney said it does not. He explained the intent is the physician can be the qualifier as to the employee's qualification as mentioned on Page 2, Line 15 through 19 which states "A worker re-qualifies for temporary total disability benefits if the MODIFIED OR ALTERNATIVE position is no longer available FOR ANY REASON to the worker and the worker continues to be temporarily totally disabled".

Senator Towe asked Mr. Wood the same question. Mr. Wood explained he did not feel there was a problem. He explained it would be addressed both in the present law and in House Bill 280. He said if the physician does not certify the employee to take the position the employee is entitled to temporary total disability. The physician saying the employee is no longer able to perform the job is the same thing as the position is no longer available (it is no longer available to that employee).

Senator Manning asked Bob Heiser to respond to this issue. Mr. Heiser explained it had been one of his concerns. He explained his understanding is if the physician releases the employee to return to work (for a job the employee is qualified to do), the employee is no longer qualified for temporary total disability. If the injury becomes aggravated by returning to work and the attending physician no longer qualifies the employee for the work, the employee would go back to temporary total disability.

Closing by Sponsor:

Representative Thomas closed on House Bill 280.

EXECUTIVE ACTION ON HOUSE BILL 280

Motion:

Senator Blaylock moved House Bill 280 DO PASS.

Recommendation and Vote:

Motion to DO PASS CARRIED UNANIMOUS by Voice Vote. Senator Thayer will carry House Bill 280.

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 280 (third reading copy -- blue), respectfully report that House Bill No. 280 be concurred in.

Signed: _____
Richard E. Hanning, Chairman

JH 2-15-91
And. Coord.

SB 2-15 10:25
Sec. of Senate

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2/14/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P 3:25		
SENATOR LYNCH	P		
SENATOR MANNING	P		
SENATOR NATHE	P		
SENATOR PIPINICH	P		temp. E
SENATOR TOWE	P		

Each day attach to minutes.

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 59624

February 14, 1991

TESTIMONY BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS
COMMITTEE ON HOUSE BILL 280

BY MIKE MICONE, COMMISSIONER OF LABOR AND INDUSTRY

Mr. Chairman and members of the committee.

I want to express to you the importance Governor Stephens places on the passage of this legislation.

The first issue is obvious. That is, the sooner an injured worker can be returned to work, the lower the cost to the system which results in holding premiums in line for the employer. But more important, the sooner an injured worker can be returned to a productive role, the faster the healing process of his/her injury.

Montana's labor force is very proud of the work they do and want to be part of the team that has their signature on the finished product. They can't be involved in this effort if they are sitting on the sidelines.

This legislation will require a great deal of cooperation from employers as they are being asked to maintain the level of wages of the employee even though the worker is performing a less productive task. The Governor will ask the insurers in the state to work with their policyholders in implementing the program. The Governor is committed to this program and we will intercede where necessary to obtain the cooperation of employers that have questions or fears.

This in no way reduces our responsibility to enforce safety standards in the public sector. And we will continue our efforts to make all workplaces - safe workplaces.

We encourage your approval of HB 280.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 9

DATE 2/14/91

BILL NO. HB 280

"AN EQUAL OPPORTUNITY EMPLOYER"

25

COMMITTEE ON

Senate Labor

DATE

2/14/91

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ron Perring - Billings	International BEW	HB-204	✓	
" " "	" " "	SB 267	✓	
Ron Burke	IBEW	SB 267	✓	
" "	" "	HB 204	✓	
DAN EDWARDS	OCAL	HB 204	✓	
" "	"	HB 152	✓	
" "	"	SB 267	✓	
Riley Johnson	NFIB	HB 152		X
Charles Brooks	MT. RPT. / ASSOC	HB 152	✓	
Mike Mieser	DLT	HB 280	✓	
Mike Mieser	DLT	HB 152	✓	
Robert Nommensen	DLT	SB 267		✓
Longwood	SLETTEN CONST. CO.	HB 204	✓	
Kathy Kirsch	MT. Self Insurance	HB 280	✓	
E FENDERSON	Leidner D.D.	H.B. 152		✓
KEVIN JONES	MT ST BLDG TRADES	HB-204	✓	
Robert K. Murphy	TBEW	HB-204	✓	
Jim Stucky	INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS	HB 204	✓	
Stuart Poggelt	Operating Eng. Local 900	HB 204	✓	
Bob Heiser	MT Insurance Assoc	HB 152	✓	
John Fitzpatrick	U.F.C.W.	HB 152	✓	
Laurie Shadon	Pogues Gold Co.	SB 267		✓
CHRISTIAN MACKAY	Bozeman Chamber	HB 152	✓	
" "	AFL-CIO	HB 204	✓	
" "	"	HB 152	✓	
Don Judge	"	SB 267	✓	
Dennis Lind	Washington Contractors	HB 204	✓	

HOUSE BILL NO. 280

INTRODUCED BY THOMAS, DRISCOLL, SVRCEK, THAYER, BENEDICT,
WANZENRIED, LYNCH, SQUIRES
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO DENY TEMPORARY TOTAL
DISABILITY BENEFITS TO A WORKER WHO IS RELEASED BY A
TREATING PHYSICIAN TO RETURN TO THE SAME, A MODIFIED, OR AN
ALTERNATIVE POSITION WITH THE SAME EMPLOYER AT AN EQUIVALENT
OR HIGHER WAGE EVEN IF THE WORKER HAS NOT REACHED MAXIMUM
HEALING; TO PROVIDE FOR REQUALIFICATION FOR BENEFITS;
AMENDING SECTION 39-71-701, MCA; AND PROVIDING AN EFFECTIVE
DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for temporary total disability
-- exception. (1) Subject to the limitation in 39-71-736 and
subsection (4) of this section, a worker is eligible for
temporary total disability benefits when the worker suffers
a total loss of wages as a result of an injury and until the
worker reaches maximum healing.

(2) The determination of temporary total disability
must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing

temporary total disability shall be 66 2/3% of the wages
received at the time of the injury. The maximum weekly
compensation benefits may not exceed the state's average
weekly wage at the time of injury. Temporary total
disability benefits must be paid for the duration of the
worker's temporary disability. The weekly benefit amount may
not be adjusted for cost of living as provided in
39-71-702(5).

(4) If the treating physician releases a worker to
return to the same, a modified, or an alternative position
THAT THE INDIVIDUAL IS ABLE AND QUALIFIED TO PERFORM with
the same employer at an equivalent or higher wage than he
received at the time of injury, the worker is no longer
eligible for temporary total disability benefits even though
he has not reached maximum healing. A worker requalifies for
temporary total disability benefits if the MODIFIED OR
ALTERNATIVE position is no longer available FOR ANY REASON
to the worker and the worker continues to be temporarily
totally disabled, as defined in 39-71-116.

(4)(5) In cases where it is determined that periodic
disability benefits granted by the Social Security Act are
payable because of the injury, the weekly benefits payable
under this section are reduced, but not below zero, by an
amount equal, as nearly as practical, to one-half the
federal periodic benefits for such week, which amount is to

REFERENCE BILL

1 be calculated from the date of the disability social
2 security entitlement.

3 ~~(5)~~(6) Notwithstanding subsection (3), beginning July
4 1, 1987, through June 30, 1991, weekly compensation benefits
5 for temporary total disability may not exceed the state's
6 average weekly wage of \$299 established July 1, 1986."

7 NEW SECTION. **Section 2.** Applicability. [This act]
8 applies to claims for injuries that occur after [the
9 effective date of this act].

10 NEW SECTION. **Section 3.** Effective date. [This act] is
11 effective July 1, 1991.

-End-

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